

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
 FOR THE COUNTY OF YAVAPAI

2012 FEB 15 AM 8:55 ✓

SANDRA K MARKHAM, CLERK

BY: _____

C. Flick

STATE OF ARIZONA,)

Plaintiff,)

vs.)

JAMES ARTHUR RAY,)

Defendant.)

Case No. V1300CR201080049

Court of Appeals

Case No. 1 CA-CR 11-0895

REPORTER'S TRANSCRIPT OF PROCEEDINGS
 BEFORE THE HONORABLE WARREN R. DARROW

PRETRIAL CONFERENCE

APRIL 26, 2010

Camp Verde, Arizona

ORIGINAL

REPORTED BY
 MINA G. HUNT
 AZ CR NO. 50619
 CA CSR NO. 8335

1 IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
2 FOR THE COUNTY OF YAVAPAI
3
4 STATE OF ARIZONA,)
5 Plaintiff,)
6 vs) Case No V1300CR201080049
7 JAMES ARTHUR RAY,) Court of Appeals
8 Defendant) Case No 1 CA-CR 11-0895
9
10
11
12
13

14 REPORTER'S TRANSCRIPT OF PROCEEDINGS
15 BEFORE THE HONORABLE WARREN R DARROW
16 PRETRIAL CONFERENCE
17 APRIL 26, 2010
18 Camp Verde, Arizona
19
20
21
22
23

24 REPORTED BY
25 MINA G HUNT
AZ CR NO 50619
CA CSR NO 8335

Mina G Hunt (928) 554-8522

1 Proceedings had before the Honorable
2 WARREN R. DARROW, Judge, taken on Monday, April 26,
3 2010, at Yavapai County Superior Court,
4 Division Pro Tem B, 2840 North Commonwealth Drive,
5 Camp Verde, Arizona, before Mina G. Hunt, Certified
6 Reporter within and for the State of Arizona
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Mina G Hunt (928) 554-8522

1 APPEARANCES OF COUNSEL

2 For the Plaintiff

3 YAVAPAI COUNTY ATTORNEY'S OFFICE
4 BY SHEILA SULLIVAN POLK, ATTORNEY
5 255 East Gurley
6 Prescott, Arizona 86301-3868

7 For the Defendant.

8 THOMAS K. KELLY, PC
9 BY THOMAS K. KELLY, ATTORNEY
10 425 East Gurley
11 Prescott, Arizona 86301-0001

12 MUNGER TOLLES & OLSON, LLP
13 BY BRAD D. BRIAN, ATTORNEY
14 BY LUIS LI, ATTORNEY
15 BY TRUC DO, ATTORNEY
16 355 South Grand Avenue
17 Thirty-fifth Floor
18 Los Angeles, California 90071-1560
19 (Appearing by telephone)

20 For victims Jane Shore and Alyssa Gillespie.

21 GALLAGHER & KENNEDY PA
22 BY PATRICK J McGRODER, III, ATTORNEY
23 2575 E Camelback Rd, Phoenix, AZ, 85016
24 (Appearing by telephone.)

25 For victims the Brown family

STONE & MAGNANINI, LLP
BY ROBERT A. MAGNANINI, ATTORNEY
575 Lexington Avenue
New York, NY 10022
(Appearing by telephone)

Mina G Hunt (928) 554-8522

1 PROCEEDINGS
2 THE COURT: This is V1300CR201080049, State of
3 Arizona versus James Arthur Ray. Mr. Ray is not
4 present

5 Mr Kelly, he's waiving his appearance;
6 is that correct?

7 MR. KELLY: That's correct, Judge.

8 THE COURT: And Ms Polk is present in person,
9 also representing the state And I have a number
10 of people who are on the phone. I will go through.
11 Just please acknowledge if you are present

12 Brad Brian?

13 MR BRIAN: Yes.

14 THE COURT. Luis Li?

15 MR. LI Present

16 THE COURT. Truc Do?

17 MS DO: Good morning, Your Honor.

18 THE COURT: Good morning.

19 And Mr Brian, Mr. Li and Ms Do are
20 cocounsel for the defendant

21 Pat McGroder?

22 MR. MCGRODER. Good morning, Your Honor.

23 THE COURT: Good morning. With the --
24 Gallagher and Kennedy, on behalf of the Shore
25 family

Mina G Hunt (928) 554-8522

1 George Brown?
 2 MR. BROWN: Present, Your Honor. Thank you.
 3 THE COURT: Thank you.
 4 Robert Magnanini?
 5 MR. MAGNANINI: Yes, Your Honor. I'm here as
 6 well.
 7 THE COURT: Okay. Representing the Brown
 8 family.
 9 Andrea Puckett?
 10 MS. PUCKETT: Present.
 11 THE COURT: And Jane Shore-Gripp?
 12 MS. SHORE-GRIPP: Yes. Good morning,
 13 Your Honor.
 14 THE COURT: Good morning. Thank you.
 15 I don't know if there is anybody else who
 16 is making an appearance or at least here for the
 17 proceeding today.
 18 Okay. This is the time set for a
 19 pretrial conference really just to address
 20 scheduling matters. And I'd like to do that.
 21 There is a motion that has been joined. I got the
 22 state's reply concerning the subpoena duces tecum
 23 question. And I don't have that set for an oral
 24 argument today. But I'll ask each of the parties
 25 where things stand.

Mina G. Hunt (928) 554-8522

1 Ms. Polk.
 2 MS. POLK: Judge, in general or on the motion
 3 to quash?
 4 THE COURT: Well, in general. But do I want
 5 to make sure we address that. I don't think anyone
 6 requested oral argument. If that's going to be
 7 requested, of course, I want to know that. But in
 8 general.
 9 MS. POLK: Judge, the state has not requested
 10 oral argument. I don't believe it's necessary on
 11 the motion to quash. That is the only matter that,
 12 I believe, is pending at this time other than the
 13 issue of where the case will be tried. And I note
 14 from the minute entry from the last time we were
 15 together, the Court said that at today's hearing
 16 you would address the issue of whether the trial
 17 could be held at the Prescott courthouse.
 18 THE COURT: And I can attempt to address that.
 19 The other thing I thought I mentioned is I did want
 20 to set some dates for motion hearings. And I do
 21 have some proposed dates for that. Because that's
 22 anticipated, there would be time needed for that.
 23 Okay. We'll get to those things.
 24 Mr. Kelly.
 25 MR. KELLY: Judge, in regards to the motion to

Mina G Hunt (928) 554-8522

1 quash, I would defer to Mr. Brian in that regard.
 2 However, at the appropriate time I would like to
 3 discuss moving the venue to Prescott.
 4 THE COURT: Okay.
 5 Then, Mr. Brian and Ms. Polk, the matter
 6 is submitted unless somebody is asking for oral
 7 argument.
 8 MR. BRIAN: Truc Do from our office has
 9 handled that. I'll defer to her on this.
 10 Ms. Do, are we requesting oral argument
 11 on this?
 12 MS. DO: Good morning, Your Honor. We are not
 13 asking for oral argument. We believe the issue has
 14 been thoroughly briefed. However, if the Court
 15 wants to set oral argument, we would be amenable to
 16 it.
 17 I think I heard Your Honor say that
 18 someone has joined in on the state's motion. And
 19 we've not received notice of any joinder.
 20 MR. BRIAN: I think the Court said that the
 21 matter has been joined.
 22 MS. DO: Okay.
 23 THE COURT: Yes. It's been briefed. We have
 24 a motion, response, reply, all the information I
 25 think I need to make the decision.

Mina G Hunt (928) 554-8522

1 Ms. Polk, did you want to have any oral
 2 argument?
 3 THE REPORTER: I don't know who that man was
 4 that spoke before Ms. Do.
 5 THE COURT: Brad Brian spoke.
 6 THE REPORTER: Thank you.
 7 MR. BRIAN: We would defer to the Court,
 8 Your Honor. We think it's been fully briefed. We
 9 don't need oral argument.
 10 THE COURT: Okay, then. I'll just issue a
 11 ruling, then, this week on that. For now the stay
 12 remains in effect.
 13 MR. BRIAN: Your Honor, in terms of other --
 14 and thinking about your comment about other hearing
 15 dates, we are contemplating some motions. One
 16 motion I'm sure we're going to file is to strike
 17 the allegation of aggravating circumstances. We
 18 are considering -- we have not made a decision, but
 19 we are considering filing a chang-of-venue motion
 20 in light of all the publicity. We've not made a
 21 final decision. That in no way reflects on
 22 Your Honor or the Court. But we're just evaluating
 23 the publicity. We have not made a final decision
 24 on that.
 25 THE COURT: And what motion was that?

Mina G Hunt (928) 554-8522

1 MR. BRIAN: That would be a motion to change
2 venue.

3 THE COURT: Oh. Okay.

4 MR. BRIAN: We recognize that's an
5 extraordinary motion. And we're obviously giving
6 it a lot of thought before we file it, Your Honor.

7 The motion we are definitely going to
8 file and wanted to alert the Court and would
9 request that the Court actually set aside some
10 time -- set aside some time for, this is a motion
11 that's based upon the destruction of the crime
12 scene evidence. We think that's going to require
13 both argument and an evidentiary hearing. And we
14 were hoping the Court would have some time probably
15 in August to hear that motion.

16 We also anticipate there would be some
17 motions in limine. But we would assume those would
18 be heard a couple weeks before trial as part of an
19 evidentiary hearing.

20 THE COURT: I'll just say now, two days that I
21 wanted to set aside for motion hearings were
22 July 20th and July 21st. Just allow all day for
23 hearings on those two days. I don't want to have
24 motions delayed if they can be filed and argued
25 sooner.

Mina G. Hunt (928) 554-8522

1 And as a matter of fact, for July 20th
2 and July 21st, it would probably require a slight
3 acceleration of the motion deadline just to give
4 everybody the whole briefing time as well. But I
5 want to set --

6 MR. BRIAN: Your Honor, this is Brad Brian. I
7 start trial in another matter on July 19. I don't
8 have to be at the hearing on the motion to strike
9 the aggravated circumstances. I do need to be at
10 the hearing with respect to the destruction of the
11 crime scene. Now, we could try to accelerate that
12 and hear it before. Or, alternatively, we would
13 ask to hear it sometime after August 5 or 10.

14 THE COURT: I'm going to leave those two dates
15 there and just ask the parties to get together with
16 my judicial assistant and set times if there is
17 more convenient times. But I'll leave those two
18 dates there for now. But I'll be glad to reset the
19 time when it's convenient for everyone as best I
20 can.

21 MR. BRIAN: We'll work with your staff on that
22 one.

23 THE COURT: Thank you.

24 With regard to which judicial district of
25 Yavapai County the trial takes place in, Ms. Polk,

Mina G. Hunt (928) 554-8522

1 that's what you were talking about earlier.

2 MS. POLK: Yes, Your Honor.

3 THE COURT: And I've done that before, never
4 in a trial that's anticipated to be the length that
5 this trial is anticipated to be. And it's just a
6 question of getting -- well, it's a number of
7 questions actually. This courtroom is well suited.
8 It would be one that I would prefer.

9 But I would certainly hear the parties.
10 I don't know if anyone has inquired of other
11 divisions, court admin. I haven't informally. But
12 I can tell you -- I haven't formally or informally.
13 I can tell you that asking court admin for
14 somebody's courtroom for about four months would
15 not likely get a favorable or a positive response.
16 There was some talk about using perhaps the federal
17 courthouse. And I don't know if anybody has looked
18 into that.

19 Ms. Polk, do you know anything just about
20 logistics, anything more than I do?

21 MS. POLK: No. I do not, Your Honor. And the
22 reason for the request is I understand that it is
23 convenient for the Court. But this case, unlike
24 other cases that are tried over here, really has no
25 connection to the Verde Valley. The defendant and

Mina G. Hunt (928) 554-8522

1 his family have no connection to the Verde. All of
2 the victims have no connection to the Verde. The
3 witnesses and then, of course, the attorneys.

4 Unlike other cases where the state has an
5 interest in trying the case at the general location
6 where a crime has occurred, this case simply does
7 not have those compelling facts. And it's --
8 again, I appreciate the fact that it is not
9 convenient for the Court. But for the other
10 parties involved, trying it over in the Prescott
11 area makes a little bit more sense logistically.

12 If the Court would like, I can follow up
13 with the court administrator of the issue of the
14 federal courthouse.

15 THE COURT: Okay. Please.

16 And, Mr. Kelly, or Mr. Brian, somebody
17 from the defense. I understand that Mr. Brian has
18 indicated he believes there is a motion to change
19 venue filed. But if that doesn't happen, depending
20 on the result, what does the defense think about
21 whether it be preferable to have the case in
22 Prescott?

23 MR. BRIAN: Without waiving our right to seek
24 a change of venue, if we choose to do that -- and I
25 emphasize if we choose to do that, we would have no

Mina G. Hunt (928) 554-8522

1 objection to the case being tried in Prescott and
2 think that to some extent that would be more
3 convenient to the parties, counsel, their
4 witnesses, recognizing that we would defer to the
5 Court. Because obviously we don't want to
6 inconvenience the Court unreasonably either.

7 THE COURT: Mr. Kelly, did you want to say
8 something?

9 MR. KELLY: Judge, to add to Ms. Polk's
10 rationale as to why Prescott would be a better
11 location, in addition to that, Judge, I remind the
12 Court that witness mileage fees would perhaps
13 offset the cost of leasing the federal courthouse
14 during that time period.

15 I believe statistically, at least with my
16 experience, the majority of the jury pool will be
17 out of the Prescott, Prescott Valley, Chino Valley
18 area. Mileage has to be paid by statute. I
19 believe that would offset somewhat the cost of
20 using the federal building.

21 In addition to that, Judge, given the
22 size of the participants in this case -- and I'm
23 speaking of the victims, their representatives, the
24 interested citizens -- I don't believe that your
25 courtroom perhaps is large enough.

Mina G Hunt (928) 554-8522

1 But more importantly, the disruption to
2 the normal, administrative, day-to-day functions of
3 the courthouse would also be another factor to move
4 it to a completely separate site such as the
5 federal court building.

6 And I have no objection contacting the
7 court administrator to find out the steps necessary to
8 find out the availability of the federal courtroom.

9 Thank you.

10 THE COURT: Thank you.

11 Since the last time we had a hearing
12 conference in the case, there have been
13 reassignments within the Superior Court. Provides
14 a little clearer picture. But I'll be expected to
15 do just in general -- and that's helpful, I think,
16 in assessing whether or not the trial could
17 possibly take place in Prescott.

18 And I understand, Mr. Brian, this is no
19 comment at all on whether you file a change of
20 venue motion or how I would do that, of course.
21 Just looking at contingencies. So we'll continue
22 to explore that.

23 I'd like to set another pretrial
24 conference off about six weeks.

25 And has there been -- I know there has

Mina G Hunt (928) 554-8522

1 been some discovery taking place and there is a
2 dispute involved with that. But how is discovery
3 going in the case?

4 Ms. Polk.

5 MS. POLK: Your Honor, the state has disclosed
6 everything in our possession. We continue to
7 attempt to find out if there is other records out
8 there. But everything that we have in our
9 possession or any agencies that we work with or had
10 any involvement in the case we've contacted. We've
11 done multiple supplemental disclosures.

12 With respect to the defense, I don't
13 believe the state has received anything that I'm
14 aware of.

15 THE COURT: And no interviewing has taken
16 place at this point, Mr. Kelly or Mr. Brian?

17 MR. BRIAN: Not yet, Your Honor. We will be
18 moving forward on that in the relatively near
19 future. I don't think we're going to seek to
20 interview everybody. We will be doing what I'll
21 call "focused interviews."

22 THE COURT: Okay.

23 Then I want to formalize these next dates
24 I'm going to set.

25 Anything else you want to address today,
Mina G. Hunt (928) 554-8522

1 Ms. Polk?

2 MS. POLK: No, Your Honor. Thank you.

3 THE COURT: Mr. Brian, Mr. Kelly?

4 MR. BRIAN: No, Your Honor.

5 THE COURT: Or any other attorneys, for that
6 matter?

7 Then it's ordered setting the next
8 pretrial conference for June 22nd at 9:00 a.m.
9 That's June 22nd at 9:00 a.m. Again, these dates
10 can be adjusted. If you need to do that, please do
11 that sooner rather than later.

12 With the same procedure announced before,
13 the defendant, Mr. Ray's, presence may be waived
14 for that. But as was done for this hearing, there
15 would be a filing, and the state would have an
16 opportunity to respond to that.

17 And those two days I mentioned, July 20,
18 July 21st, it's ordered setting aside those days
19 for hearing oral argument on any pending motions.
20 Again, that can be adjusted, those two dates. And
21 the time will be, basically, 9:00 a.m. to 5:00.
22 Full day I'll set aside on each of those two days.

23 The time has been excluded up to the
24 trial. I'll confirm that. I'll confirm the
25 existing conditions of release. Unless there is

Mina G Hunt (928) 554-8522

1 anything further, thank you very much.
 2 MS. POLK: Thank you.
 3 MR. BRIAN: Nothing from the defense,
 4 Your Honor.
 5 THE COURT: For all the people on the phone, I
 6 will disconnect at this time. Thank you.
 7 (The proceedings concluded.)
 8
 9
 10
 11
 12
 13
 14
 15
 16
 17
 18
 19
 20
 21
 22
 23
 24
 25

Mina G. Hunt (928) 554-8522

1 STATE OF ARIZONA)
 2 COUNTY OF YAVAPAI) ss REPORTER'S CERTIFICATE
 3

4 I, Mina G Hunt, do hereby certify that I
 5 am a Certified Reporter within the State of Arizona
 6 and Certified Shorthand Reporter in California

7 I further certify that these proceedings
 8 were taken in shorthand by me at the time and place
 9 herein set forth, and were thereafter reduced to
 10 typewritten form, and that the foregoing
 11 constitutes a true and correct transcript

12 I further certify that I am not related
 13 to, employed by, nor of counsel for any of the
 14 parties or attorneys herein, nor otherwise
 15 interested in the result of the within action

16 In witness whereof, I have affixed my
 17 signature this 13th day of February, 2012
 18
 19
 20
 21
 22

23 -----
 24 MINA G HUNT, AZ CR No 50619
 25 CA CSR No 8335

Mina G. Hunt (928) 554-8522

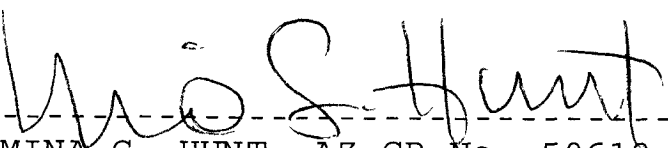
1 STATE OF ARIZONA)
2 COUNTY OF YAVAPAI) ss: REPORTER'S CERTIFICATE

3
4 I, Mina G. Hunt, do hereby certify that I
5 am a Certified Reporter within the State of Arizona
6 and Certified Shorthand Reporter in California.

7 I further certify that these proceedings
8 were taken in shorthand by me at the time and place
9 herein set forth, and were thereafter reduced to
10 typewritten form, and that the foregoing
11 constitutes a true and correct transcript.

12 I further certify that I am not related
13 to, employed by, nor of counsel for any of the
14 parties or attorneys herein, nor otherwise
15 interested in the result of the within action.

16 In witness whereof, I have affixed my
17 signature this 13th day of February, 2012.

18
19
20
21
22 
23 -----
24 MINA G. HUNT, AZ CR No. 50619
25 CA CSR No. 8335